

1. Mr. Prochaska alleges that he injured his back on June 9, 1998, while putting a 2000 pound die in a press while working for Evcon Industries. The next morning Mr. Prochaska sought medical treatment at the Emergency Room of St. Francis Medical Center. He was immediately hospitalized for diabetes.

2. Mr. Prochaska spent five or six days in the hospital. During that time, his back was not evaluated.

3. On June 29, 1998, Mr. Prochaska returned to work for Evcon but he continued to experience back pain. He worked until late August 1998 when he consulted a chiropractor who diagnosed a compression spinal fracture. Eventually Dr. Jacob Amrani began treating Mr. Prochaska. On October 2, 1998, Dr. Amrani operated on Mr. Prochaska's low back. The operation included fusing the lumbar spine from L1 through L3.

4. At the conclusion of the November 12, 1998 preliminary hearing, Judge Barnes authorized Dr. Philip R. Mills to do an independent medical evaluation. In his December 10, 1998 letter to the Judge, Dr. Mills writes:

Based upon a careful review of the records and the history provided by the patient and his family that were present, it does not appear that his [back] problem was causally related to the work incident. It appears to me that he developed his problems secondary to staph septicemia and this is more likely related to his immunologic breakdown with his ketoacidosis.

5. After reviewing the various medical records introduced at the preliminary hearing and Dr. Mills' report, the Board finds that Mr. Prochaska's back pain and back surgery were more probably than not caused by an infectious disease rather than an accident that he sustained at work.

6. The Board affirms the Judge's findings and analysis as set forth in the preliminary hearing Order.

CONCLUSIONS OF LAW

1. In workers compensation proceedings, workers have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which their rights depend.¹

2. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²

3. Because Mr. Prochaska has failed to prove that he injured his back at work, the request for benefits must be denied.

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

4. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated April 2, 1999, entered by Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
Vincent A. Burnett, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1998 Supp. 44-534a(a)(2).